

# **INFORMATION ON FILING A LAWSUIT IN FEDERAL COURT WITHOUT A LAWYER**



## **UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA**

*NOTE: This handbook is not intended for prisoners who file civil rights suits or petitions for habeas corpus. The Clerk of Court can provide special forms to be used in those kinds of cases.*

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## **WELCOME**

Welcome to the United States District Court for the Western District of Louisiana. We have prepared this handbook for persons who are self-represented (often referred to as “pro se”) in a federal civil lawsuit.

This handbook provides you with basic information that will assist in the decision-making process and in the filing of a civil lawsuit. You should not rely entirely on this handbook, which has space for describing only basic and general procedures. Rather, this handbook is a starting point to help you if you choose to file a lawsuit and represent yourself.

Representing yourself means that you are responsible for following the Federal Rules of Civil Procedure, the court’s Local Rules, and the court’s Standing Orders – all of which are located on the court’s website: [www.lawd.uscourts.gov](http://www.lawd.uscourts.gov). The court’s website also provides a Guide to Practice that has more detailed information than this handbook.

You have a right to represent yourself. You do not have to have an attorney, but we strongly encourage you to try to obtain legal representation. There are some organizations in Louisiana that provide free legal services to low-income residents. To find a legal aid office near you, contact the Louisiana State Bar Association at 800-421-5722 or the Louisiana Civil Justice Center at 800-310-7029. Other sources of legal services or lawyer referrals include:

**Acadiana Legal Service Corporation**

337-237-4320 (Lafayette)

337-443-7281 (Alexandria)

337-439-0377 (Lake Charles)

**Central Louisiana Pro Bono Project**

318-449-9778 (Alexandria)

**Lafayette Bar Association Volunteer Lawyers**

337-237-4700

**Shreveport Pro Bono Project**

318-221-8104

**Legal Services of North Louisiana**

318-222-7186 (Shreveport)

318-699-0889 (Monroe)

318-352-7220 (Natchitoches)

**Shreveport Bar Association Lawyer Referral Service**

318-222-3643

**The Pro Bono Project**

504-581-4043

This list is not exhaustive. Additional resources may be found on the internet or through a local bar association.

If you have questions or need to know more about the law, it is up to you to research the answers yourself. While employees of the Clerk of Court can answer certain questions about court procedures, they cannot give legal advice or suggest a course of action. **You may not call the judge or the judge's staff to ask for legal advice on how to pursue your case or to argue your position.**

## **ALTERNATIVES TO FILING A LAWSUIT**

Bringing a lawsuit takes a considerable amount of time, money, and energy. Before filing a lawsuit, you may want to consider other alternatives:

**Attempt to Work Things Out:** Consider talking with or writing directly to the person you think is responsible for causing your problem. If you approach someone respectfully and give him or her a real opportunity to talk, that person may be more likely to respond in a positive manner than if your first contact after the problem arises is a lawsuit.

**File a Small Claims Court Suit:** In some cases, you may have the option of filing a case in small claims court, which is designed to be used by self-represented people. These courts are part of the Louisiana state (not federal) court system. For more information on small claims courts, contact the City Court or Justice of the Peace near you, or visit:

[www.lasc.org/links.asp#CityandParishCourts](http://www.lasc.org/links.asp#CityandParishCourts)

## **FIVE QUESTIONS TO ANSWER BEFORE YOU FILE A LAWSUIT**

There are some important questions to consider before you file a lawsuit in this court. If you cannot answer “yes” to each of the questions, it is unlikely that you will be able to prevail in a lawsuit in this court. If you can answer “yes” to all of the questions except No. 1 or No. 2, you should consider filing your suit in another court.

Even if you answer “yes” to all five questions, and you believe you should prevail in your lawsuit, that does not mean that you will do so. It means only that you meet some preliminary requirements.

**Please answer these questions before filing a lawsuit in this court:**

*Jurisdiction:* Is federal court (or state court) the proper place to file my lawsuit?

*Venue:* Is the Western District of Louisiana the proper federal court for my lawsuit?

*Statute of Limitations:* Is my lawsuit filed within the time allowed?

*Exhaustion:* Have I pursued administrative remedies before filing my lawsuit?

*Defendants:* Am I able to identify and locate the proper defendants for my lawsuit?

**JURISDICTION: Is federal court (or state court) the proper place to file my lawsuit?**

There are two court systems in the United States: the state court system and the federal court system. The state courts are the courts of “general jurisdiction,” which means that they can hear and decide almost any kind of legal controversy. Louisiana state courts typically hear cases relating to civil (such as personal injury or breach of contract), domestic (divorce and child custody), and property matters.

Federal courts have limited jurisdiction and may handle only certain types of cases. Categories of cases that the federal court may hear are (1) cases brought under a federal statute such as federal civil rights and employment discrimination laws, (2) cases where the parties are citizens of different states and the dispute concerns more than \$75,000, and (3) cases where the United States is a party, such as a suit against the Postal Service or an appeal of a social security benefits claim.

If your case does not fall within one of these categories, it may be that state court (not federal court) is the proper place to bring your case.

**VENUE: Is the Western District of Louisiana the proper federal court for my lawsuit?**

If you decide a federal court has jurisdiction to hear your kind of lawsuit, you must next determine which federal court is the proper place, or venue, to file the suit.

There are three federal district courts in Louisiana: the Eastern District (the New Orleans area); the Middle District (the Baton Rouge area), and the Western District (the rest of Louisiana). Generally, you may only file a lawsuit in the Western District if (1) the defendant resides in the district or (2) the events that give rise to your lawsuit happened within the boundaries of the Western District.

The Western District is divided into five divisions. Parties are not entitled to choose the division for their lawsuit. The Clerk of Court will assign a lawsuit to the proper division. The five divisions are:

<b>Division</b>	<b>Parishes</b>
<b>Alexandria</b>	Avoyelles, Catahoula, Concordia, Grant, LaSalle, Natchitoches, Rapides, and Winn
<b>Lafayette</b>	Acadia, Evangeline, Iberia, Lafayette, St. Landry, St. Martin, St. Mary, and Vermilion
<b>Lake Charles</b>	Allen, Beauregard, Calcasieu, Cameron, Jefferson Davis, and Vernon
<b>Monroe</b>	Caldwell, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Richland, Tensas, Union and West Carroll
<b>Shreveport</b>	Bienville, Bossier, Caddo, Claiborne, DeSoto, Red River, Sabine and Webster

#### **STATUTE OF LIMITATIONS: Is my lawsuit filed within the time allowed?**

Usually a claim must be filed within a certain period of time after an injury occurs or is discovered. This rule is called the statute of limitations, or under Louisiana law the “prescriptive period.”

The length of the statute of limitations varies depending on the type of claim. For example, most personal injury and civil rights claims in Louisiana must be filed within one year of the accident or event, and breach of contract cases have a ten-year prescriptive period. An appeal of a final decision of the Commissioner of Social Security must generally be filed within 60 days after you receive the final decision.

There are many other periods of limitations that apply to various kinds of claims. It is your responsibility to determine which applies to your case and act within the time allowed. This may require you to do some legal research. You should be certain that the statute of limitations has not expired before you file a lawsuit.

#### **EXHAUSTION: Have I pursued administrative remedies before filing my lawsuit?**

You sometimes must present your claim to all levels of review by a state or federal agency before you can properly file a lawsuit in federal court. This is called exhaustion of administrative

remedies. Examples of claims where exhaustion is often required are: (1) employment-discrimination suit against a current or former employer; (2) an appeal from a denial of Social Security benefits or other challenge to a decision by a federal agency; and (3) a suit under the Federal Tort Claims Act for personal injury or damage caused by a federal employee.

#### **WHO TO SUE: Am I able to identify and locate the proper defendants for my lawsuit?**

Before you sue a person (name him a “defendant”), you should be confident that the defendant is the person or company that engaged in the wrongful conduct that caused you harm or is otherwise legally responsible for the harm. You must also be able to provide an address where the defendant can be served with your lawsuit.

You must be able to list a defendant by his actual name. Do not sue groups of people such as “the personnel department,” “the sheriff’s department,” or “the medical staff.” You cannot pursue a lawsuit against “John Doe” or “Jane Doe” defendants.

For a corporation or other business, you must be able to provide the company’s complete and actual name. You may know a business as Burns Timber, but its full name may be Burns Timber Management, Inc. You must provide the complete name in your lawsuit. You may be able to find a business’s complete name at the Louisiana Secretary of State’s online corporations database. Start at [www.sos.la.gov](http://www.sos.la.gov).

## **FILING YOUR LAWSUIT**

If you still want to file a lawsuit in the Western District after answering the questions asked above, the information provided below will guide you in the initial steps.

#### **Write Your Complaint**

The first step is for you to file a complaint. The complaint tells the court who you are suing, what your case is about, and what you want the court to do about it.

The complaint, and all other filings, must be typed or neatly handwritten on 8 ½ by 11 inch (letter size) white paper. Type or write on one side of the paper only, and leave at least a one-inch margin at the top, bottom, and both sides.

The first page begins with the case “caption,” which includes identifying information about your case. *Below is a sample caption:*

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF LOUISIANA _____ DIVISION	
MORGAN SMITH (Plaintiff)	CIVIL ACTION NO. _____
VERSUS	JUDGE _____
TAYLOR JONES (Defendant)	MAGISTRATE JUDGE _____
COMPLAINT	

The Clerk of Court will assign a case number (or “civil action number”), the division, a judge, and a magistrate judge. You should include that information, especially the case number, in the caption of every paper you file after the complaint.

Each paragraph of the complaint must be numbered.

**Paragraph number one** should provide YOUR NAME and ADDRESS. For example, “The plaintiff in this case is Morgan Smith, who is a citizen of Louisiana, and whose mailing address is 400 Able Street, Monroe, LA, 71210.”

**Paragraph number two** should provide the NAME and ADDRESS of the DEFENDANT(S). If there is more than one defendant, list each defendant’s name and address in separate additional paragraphs.

**Paragraph number three** should give a short and plain statement of the grounds for the court’s jurisdiction. For example, “This court has jurisdiction over this civil action because the plaintiff’s claims arise under federal law, the Age Discrimination in Employment Act.” Or, “This court has jurisdiction over this civil action because the plaintiff and defendant are citizens of different states and the amount in controversy exceeds \$75,000.”

You should then explain in numbered paragraphs the **FACTS** behind your lawsuit. You should provide enough details so the judge and the defendant can understand what your issues are. Be clear and understandable. Do not try to “sound like a lawyer.”

Some kinds of claims entitle the plaintiff to request that they be decided by a **JURY** rather than a judge alone. If you would like to request a jury, you should write, “I want a trial by jury” in your complaint. You should also add to the caption of the complaint: “Jury Trial Demanded.”



In the **last paragraph** of the complaint, state the **RELIEF** you are seeking from the court. For example, a plaintiff might ask the court to order the defendant to pay the plaintiff money for lost wages or medical bills, or the plaintiff might ask the court to issue an injunction that requires a defendant to stop trespassing on his land.

Finally, you must **SIGN** your complaint. You should also type or print your name, address, and phone number below your signature. This signature block and your signature must appear on every paper you file with the court. In accordance with Rule 11 of the Federal Rules of Civil Procedure and Rule 11.1 of the Local Rules for the Western District of Louisiana, your signature is your representation to the court that the complaint or other filing is not presented for an improper purpose such as harassment, the legal claims are warranted by law, and the facts alleged can be supported by evidence. A violation of that representation may result in sanctions, including an order that you pay money as a penalty or to reimburse the defendant's attorney fees.

### **File Complaint With the Clerk of Court; Filing Fee**

You will need to complete a **Civil Cover Sheet** to go with your complaint. The form and instructions can be found on the court's website in the Forms section under Court Operations, or the Clerk of Court can provide you a copy.

The **filing fee** to file a complaint is **\$350**. The fee must be paid at the time of filing by check or money order payable to "Clerk of Court," cash, or credit card.

If you cannot afford to pay the filing fee, you may be allowed to have the filing fee waived if you fill out an **Application for Leave to Proceed in Forma Pauperis**. The form is available on the court's website or from the Clerk of Court. If you file the Application, the Clerk of Court will send the paperwork to a judge, who will decide whether you are eligible for a fee waiver. If the judge denies the Application, you must pay the filing fee to have your case proceed.

To file your complaint, you will need to deliver to the Clerk of Court, *either by mail or in person* (but not by fax) to any divisional office, the following:

- **Signed Complaint**
- **Civil Cover Sheet**
- **\$350 filing fee, or**
- **Application for Leave to Proceed in Forma Pauperis**

Visitors to the courthouse must present a photo ID, and they are not allowed to bring a cell phone or any kind of a weapon inside the building.

## **Serving the Complaint**

Your next step is to serve each defendant with the complaint and a summons within 120 days of the filing of the lawsuit; otherwise, your case may be dismissed. This requirement may be met by (1) having the defendant waive service or (2) making service of process. Each method is described below.

## **Waiver of Service**

You may request that a non-government defendant waive service of the lawsuit by sending a **Notice of Lawsuit and a Request for Waiver of Service of Summons** (*Form AO 398*), along with a copy of your complaint, by first-class mail or other reliable means. You must also include two copies of the **Waiver of Service of Summons** (*Form AO 399*), and a self-addressed, postage-prepaid return envelope. See Federal Rule of Civil Procedure 4(d). If the defendant signs the waiver form and returns it to you, you must file it with the court. If the defendant does not waive service, you must proceed with service of process, as described below.

If you are suing the United States, a federal agency, a state agency, or local government, you cannot use this method and must arrange for service of process.

## **Service of Process**

A summons is a document that notifies the defendant of the commencement of your lawsuit and the requirement that he respond to the complaint. A defendant is served when he is delivered a summons and a copy of the complaint.

The Clerk of Court will send you a summons for each defendant. You must complete the summons form and make a copy. Then arrange to have one copy served, along with a copy of the complaint, on the defendant. The person who makes service must be at least 18 and cannot be a party to the case.

Service on an individual defendant is typically done by hand delivery to the defendant, or by leaving the papers at the defendant's usual place of residence with a person of suitable age and discretion. The person who makes service should fill out the **Proof of Service** section on one copy of the summons, and file it with the Clerk of Court.

Service on a corporation or other business entity is typically done by delivering the papers to the company's agent for service of process. The name and address of a company's agent for service can often be found at the Louisiana Secretary of State's online corporations database. Start at [www.sos.la.gov](http://www.sos.la.gov). The person who makes service should fill out the **Proof of Service** section on one copy of the summons, and file it with the Clerk of Court.

If your complaint is an appeal from a decision by the Commissioner of Social Security, the Clerk of Court will provide you three completed summons. You must deliver each summons, along with a copy of your complaint, by certified mail (return receipt requested) to the address on each

summons. When the returns (green cards) are mailed back to you, file them with the Clerk of Court.

For service on other government agencies, and for other methods of making service, see Federal Rule of Civil Procedure 4.

### **Service by U.S. Marshal**

If you have been granted permission to proceed in forma pauperis, without paying the filing fee, then you may file a motion that asks the court to have your complaint served by the U.S. Marshal.

If the court orders service by the Marshal, you must provide the Marshal with a copy of the complaint, the completed summons, and a completed USM 285 form (available from the Clerk of Court) for each defendant. You are also responsible for providing in your paperwork a correct address for the defendant or its agent for service.

### **After Your Lawsuit Has Been Filed**

Once a defendant has received service of process, he must generally file an **Answer** within 21 days, although courts often allow additional time. The Answer is the defendant's formal written response to the complaint. A defendant may also respond by filing a motion to dismiss or other motion.

Once an answer is filed by each defendant, the court will usually issue a **Scheduling Order** that sets forth a timetable with deadlines for the parties to follow. **Failure to meet the deadlines in a Scheduling Order may result in the dismissal of your case.** The presiding judge, magistrate judge, or clerk of court may also issue other case management orders from time to time. Requirements in these orders must also be met in a timely fashion.

The Scheduling Order will usually allow some time for **Discovery** (depositions, interrogatories, requests for production, etc.). The procedural steps related to Discovery are too detailed to cover in this handbook, so you will need to conduct research and familiarize yourself with the rules on those matters.

A defendant will often ask to take the **Deposition** of a plaintiff and other witnesses. A deposition is a meeting, usually in a lawyer or court reporter's office, where the plaintiff or witness is placed under oath and asked questions about the lawsuit. There is no judge present. The testimony is recorded. Self-represented plaintiffs are sometimes reluctant to participate in a deposition, but they are obligated to do so, and their case may be dismissed if they refuse to testify. A plaintiff may also take depositions; he will be responsible for hiring a court reporter, subpoenaing the witness, and taking the other steps required by law, and even a pauper plaintiff must pay the related expenses.

After Discovery is complete, and sometimes even earlier, a defendant may file a **Motion for Summary Judgment** and ask the court to dismiss your case on the grounds that there is not

enough evidence to warrant a trial. You will be given an opportunity to respond to such a motion by filing a memorandum, which presents the law and facts you believe support your case, and supporting evidence.

**The judge may require the parties to file a Pretrial Order** as the trial date approaches. The Pretrial Order is a document signed by all parties that outlines the positions of the parties and lists their trial witnesses and exhibits. The judge will usually provide detailed instructions and a deadline for filing. It is important for the plaintiff to work with the defendant's attorney to prepare and timely file the Pretrial Order.

**The judge may hold a pretrial conference**, where the parties meet with the judge in person or by phone to discuss the pretrial order and talk about any final issues before the trial.

**If the case proceeds to trial**, you will be responsible for subpoenaing your witnesses ahead of time. You will also need to know the rules for admitting evidence, questioning and cross-examining witnesses, and otherwise conducting a trial.

**You may appeal a final judgment of this court by filing a Notice of Appeal** (form available on the court website or from the Clerk of Court) with the Clerk of Court. The deadline is generally 30 days after entry of judgment. The filing fee is \$455. You may file a motion to waive the fee if you are a pauper. The appeal will be heard by the Fifth Circuit Court of Appeals in New Orleans. The appeals court will base its decision on a copy of the district court record and written briefs from the parties.

### **Other Important Information**

Whenever you file any document with the court after the complaint, you must:

- Send (usually by mail) a copy to each of the parties, or, if they are represented by lawyers, to their lawyers. You must include a Certificate of Service at the end of your document that represents you have sent copies. An example is as follows:

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>I certify that on this ____ day of November, 2011, I delivered a copy of this filing to defendant by depositing it in the mail, postage paid, addressed to his attorney:</p> <p>Pat Smith 300 Montana Drive Lake Charles, LA 70601.</p> <p style="text-align: right;">_____ (Signature)</p>
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- Provide the civil action number of your case on the front of the document. There is a place for the number in the caption form discussed above.
- Sign the document, and type or print your name, address, and phone number. If your address or phone number changes, you must notify the Clerk of Court. Your case may be dismissed if mail to you is returned as undeliverable at the address you provided.

### Summary of Documents Discussed

<b><u>Pleading</u></b>	<b><u>Description</u></b>	<b><u>Time Due</u></b>
<b>Civil Cover Sheet</b>	The document that must accompany the complaint and the summons before filing can occur.	Initial filing
<b>Complaint</b>	Informs the court and defendant(s) of your reason(s) for filing the lawsuit and what relief you seek.	Initial filing
<b>Summons</b>	A form used to notify the person named as the defendant of the commencement of your lawsuit and the requirement to appear and answer.	Issued by the Clerk of Court
<b>Answer</b>	Responds to the allegations of the complaint.	21 days after service of the complaint (or 60 days if service was waived)
<b>Certificate of Service</b>	Whenever a document is filed with the court, it must include a certificate of service, which certifies that a copy of the document was sent to the other party or his lawyer.	Attached to each document served and filed with the Clerk of Court

### Deficiency Notices

If one of your filings does not comply with the court's rules, the Clerk of Court may send you a Notice of Deficiency. This notice will tell you what you did wrong and what you need to do to fix it. You must follow the instructions set forth in the notice. If you do not fix the deficiency within the time allowed by the notice, your filing may be stricken.

## **LEGAL RESEARCH**

You are responsible for researching the law and rules applicable to your case. The Federal Rules of Civil Procedure, the Local Rules, and the court's Standing Orders are located on the court's website. The internet also contains other legal resources that you may find helpful.

The Fifth Circuit Court of Appeals in New Orleans maintains a comprehensive library that contains virtually all of the laws and rules that govern cases in federal court. Satellite libraries are located in Lafayette and Shreveport. If you have a case pending in the Western District, you are welcome to use one of those satellite libraries.

### **Lafayette Satellite Library**

800 Lafayette Street, Suite 5300  
Lafayette, LA 70501  
337-593-5240

### **Shreveport Satellite Library**

300 Fannin Street, Suite 5012  
Shreveport, LA 71101  
318-676-3230

Contact the library by phone before your visit to make sure it is open. Cell phones and weapons are not permitted inside the courthouses where the libraries are located.

## **A WORD OF CAUTION - SANCTIONS**

Representing yourself in a lawsuit carries certain risks and responsibilities. If you decide to proceed without an attorney, you will be responsible for learning about and following all the procedures that govern the court process.

The court may penalize a party or attorney for failing to comply with a law, rule or order. Such penalties are called sanctions, and unrepresented parties are subject to the same sanctions as licensed attorneys. For example, when a party to a lawsuit presents a document to the court, that party is verifying the accuracy and reasonableness of that document. Federal Rule of Civil Procedure 11 states that if such a submission is false, improper, or frivolous, the party may be ordered to pay monetary or other sanctions.

## FINAL THOUGHTS

Representing yourself in a civil suit can be difficult and time-consuming. **The court strongly encourages you to seek the help of an attorney.** For additional information about the federal courts, you may wish to refer to the following publications:

*Inside the Federal Courts:*

<http://www.fjc.gov/federal/courts.nsf>

*Welcome to the Federal Courts:*

[http://www.fjc.gov/public/pdf.nsf/lookup/WelFedCt.pdf/\\$file/WelFedCt.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/WelFedCt.pdf/$file/WelFedCt.pdf)

*Federal Courts and What They Do:*

[http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWhat.pdf/\\$file/FCtsWhat.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWhat.pdf/$file/FCtsWhat.pdf)

*Understanding the Federal Courts:*

<http://www.uscourts.gov/understand03/>